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14 *Attorneys for Plaintiffs*

15  
16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 JOSE ALVARADO, JIMENA  
ALVARADO, ERIKA ALVARADO,  
19 and MARCUS ALVARADO, in each  
case individually and as successor in  
20 interest to Delfino Avila, deceased,

21 Plaintiffs,

22 vs.

23 CITY OF SAN BERNARDINO and  
DOES 1-10, inclusive,

24 Defendants.  
25  
26

Case No. 5:24-cv-00088-JGB-SHK

*Assigned to:*

Hon Jesus G. Bernal

Hon. Mag. Judge Shashi H. Kewalramani

**JOINT RULE 26 SCHEDULING  
CONFERENCE REPORT**

Date: September 9, 2024

Time: 11:00 a.m.

Crtrm: Courtroom 1

3470 Twelfth Street  
Riverside, CA 92501

27 Pursuant to Local Rule 26-1, Federal Rule of Civil Procedure Rule 26(f), and  
28 this Court's Order, the parties hereby submit the following Joint Report. Pursuant to

1 Federal Rule of Civil Procedure Rule 26(f) and this Court's Order, an early meeting  
2 was held between counsel, Renee Masongsong of the Law Offices of Dale K. Galipo,  
3 counsel for Plaintiffs, and counsel for Defendants City of San Bernardino.

#### 4 **A. STATEMENT OF THE CASE**

##### 5 **i. According to Plaintiffs**

6 This is a civil rights and state tort action brought pursuant to 42 U.S.C. §1983  
7 and California law. This case arises from the violation of various rights under the  
8 United States Constitution and California law in connection with the unjustified and  
9 unlawful shooting of the decedent, Delfino Avila. Plaintiffs bring state and federal  
10 causes of action for: (1) violations of 42 U.S.C. § 1983 and the Fourth Amendment,  
11 including Excessive Force, unlawful detention and arrest, and failure to provide  
12 medical care; (2) interference with familial relations in violation of 42 U.S.C. § 1983  
13 and the Fourteenth Amendment; (3) Municipal Liability— Unconstitutional Custom,  
14 Practice, or Policy, Ratification, and Failure to Train; (4) False Arrest and False  
15 Imprisonment; (5) Battery; (6) Negligence; (7) Violation of Cal. Civil Code § 52.1.

16 On November 30, 2022, City of San Bernardino officers Zack Ewing and Carla  
17 Gutierrez responded to a call regarding an unidentified man setting fire to a palm  
18 tree. The officers contacted Delfino Avila, who on information and belief was  
19 experiencing a mental health crisis, after they arrived. Mr. Avila was holding a  
20 wooden object, but was not armed with a knife or gun. One of the officers deployed a  
21 taser at Mr. Avila, which escalated the situation. One of the officers fired lethal shots  
22 at Mr. Avila, injuring and ultimately killing him. On information and belief, the  
23 officers did not give Mr. Avila a verbal warning that they were prepared to use deadly  
24 and non-deadly force before tasing and shooting Mr. Avila. At all relevant times,  
25 including at the time of the shooting, Mr. Avila was not armed with a gun or knife and  
26 posed no immediate threat of death or serious bodily injury to any person.  
27 Additionally, there were other reasonable alternative measures available to the officers  
28 rather than shooting.

1 The shooting and other uses of force were excessive and unreasonable,  
2 particularly because at the time of the shooting and other uses of force against him, the  
3 decedent did not pose an immediate threat of death or serious bodily injury to the  
4 officers or to anyone else. The use of deadly force was unnecessary, unlawful,  
5 unjustified, and contrary to basic police training and standards. On information and  
6 belief, the decedent was not armed with a gun or a knife at all relevant times,  
7 including at the time of the shooting.

8 **ii. According to Defendants**

9 On Wednesday, November 30, 2022, at approximately 10:42 p.m., the San  
10 Bernardino Police Department (“SBPD”) Officers Zack Ewing and Carla Gutierrez  
11 were dispatched to the 1400 block of West Union Street in San Bernardino based on a  
12 911 call that a Hispanic male attempting light a palm tree on fire near the rear yard of  
13 the residence. Upon arrival at the scene, Officers Ewing and Gutierrez observed a  
14 Hispanic male (later identified as decedent Delfino Avila) on the driveway of 1464  
15 West Union Street, holding a large, cross-shaped, wooden object. The officers gave  
16 decedent multiple commands, in English and Spanish, to drop the object but he  
17 refused and swung the object at one of the officers.

18 Decedent retreated to the rear yard of the residence where he picked up another  
19 object resembling a hatchet. As decedent moved towards the officers with dangerous  
20 objects in his hands, the officer deployed their tasers. The taser deployments were  
21 ineffective, as Avila still moved aggressively towards the officers with an object  
22 raised over his head. As decedent screamed aggressively and started to charge  
23 towards Officer Gutierrez with the objects in his hands, Officer Ewing fired his duty  
24 weapon at decedent.

25 Defendants deny that the attempted detention of the decedent was unjustified or  
26 that excessive force was used. Defendants further deny that the City of San  
27 Bernardino and/or its officers violated decedent’s and/or plaintiff’s civil rights or  
28 otherwise committed state torts. Reasonable suspicion existed to detain decedent, and  
then probable cause arose after decedent threatening and attacked the officers. The

1 force used was justified under the circumstances based on decedent's dangerous,  
2 violent, and threatening conduct, which pose a threat of imminent serious bodily  
3 injury or death.

4 In addition to the issues raised by plaintiffs herein, defendants submit that this  
5 case will involve the following issues: (1) whether Officers Ewing and Gutierrez (or  
6 any other officer) are entitled to qualified immunity; and (2) decedent's comparative  
7 negligence.

## 8 **B. SUBJECT MATTER JURISDICTION**

9 This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
10 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the United  
11 States including 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the  
12 United States Constitution. This Court has supplemental jurisdiction over Plaintiffs'  
13 claims arising under state law pursuant to 28 U.S.C. § 1367(a), because those claims  
14 are so related to the federal claims that they form part of the same case or controversy  
15 under Article III of the United States Constitution.

16 Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants  
17 reside in this district and all incidents, events, and occurrences giving rise to this  
18 action occurred in this district.

## 19 **C. LEGAL ISSUES**

20 Based on current information, the key legal and factual issues in this case are:

- 21 1) Whether the actions and inactions by the involved officers were  
22 reasonable under the circumstances within the meaning of Fourth  
23 Amendment jurisprudence;
- 24 2) Whether the shooting and alleged use of excessive force against the  
25 decedent resulted from conduct that was malicious, oppressive, or in  
26 reckless disregard of his rights;
- 27 3) Whether the individual officer defendants unreasonably denied medical  
28 care to the decedent;

- 1 4) Whether the City of San Bernardino has unconstitutional policies, that
- 2 were the cause of the Plaintiffs' and the decedent's injuries;
- 3 5) Whether the officer defendants had reasonable suspicion to detain and
- 4 probable cause to arrest the decedent;
- 5 6) Whether the officers' use of force, including deadly force, was
- 6 objectively reasonable under the circumstances;
- 7 7) Whether the officers were negligent with respect to their handling of the
- 8 situation, including using force against the decedent and failing to deliver
- 9 prompt medical care to him;
- 10 8) Whether Plaintiffs are entitled to receive compensation for any damages,
- 11 including whether Plaintiffs are entitled to punitive damages; and
- 12 9) The nature and extent of the Plaintiffs' damages, including punitive
- 13 damages.

14 As mentioned above, defendants will assert the following affirmative defenses: (1)

15 whether the individual officer defendants are entitled to qualified immunity; and (2)

16 decedent's comparative negligence.

#### 17 **D. PARTIES, EVIDENCE, ETC.**

18 The Plaintiffs are JOSE ALVARADO, JIMENA ALVARADO, ERIKA

19 ALVARADO, and MARCUS ALVARADO, in each case individually and as

20 successor in interest to Delfino Avila, deceased.

21 The defendants are the CITY OF SAN BERNARDINO and its involved police

22 officers, ZACK EWING and CARLA GUTIERREZ. Plaintiffs intend to seek leave to

23 file an amended complaint naming these individual defendants.

#### 24 **E. DAMAGES**

25 Plaintiffs seek damages in excess of \$10,000,000, including wrongful death

26 damages, survival damages, and punitive damages. Plaintiffs also seek attorneys' fees

27 and costs of suit.

28 Defendants do not have sufficient information at this time to estimate potential

1 damages. Defendant City of San Bernardino denies all liability and wrongdoing for  
2 any and all of Plaintiffs' claims.

3 **F. INSURANCE**

4 The City of San Bernardino is permissibly self-insured per California  
5 Government Code § 990.

6 **G. MOTIONS**

7 Plaintiffs anticipate filing a motion to amend the complaint

8 Plaintiffs anticipate filing motions *in limine* in this case if the case proceeds to  
9 trial.

10 Plaintiffs request two weeks to oppose any dispositive motion that may be filed  
11 in this case, and the parties have proposed an extended briefing schedule on any  
12 dispositive motion.

13 Defendants intend to file a motion for summary judgment as to each of  
14 plaintiffs' claims, as well as motions in limine.

15 **H. MANUAL FOR COMPLEX LITIGATION**

16 N/A

17 **I. STATUS OF DISCOVERY**

18 The parties will exchange initial disclosures pursuant to Rule 26. Plaintiffs  
19 propounded written discovery on July 18, 2024.

20 The parties anticipate entering into a stipulated protective order prior to  
21 conducting any discovery in order to ensure the confidential nature with respect to  
22 sensitive documents.

23 **J. DISCOVERY PLAN**

24 Counsel agree that no changes should be made in the timing, form, or  
25 requirements for disclosures under Rule 26(a). The parties will make initial  
26 disclosures on or before August 9, 2024. The parties are not requesting changes to the  
27 limitations on discovery imposed under the Federal Rules of Civil Procedure or Local  
28 Rules at this time. There are no anticipated issues about disclosure or discovery of

1 electronically stored information. Counsel agree that no changes should be made as to  
2 discovery as it is governed by law or Local Rules.

3 **i. Plaintiffs**

4 Plaintiffs served a Request for Production of Documents on the City of San  
5 Bernardino on July 18, 2024. Plaintiffs may propound additional written discovery on  
6 Defendants. In addition to retaining experts and conducting expert depositions at the  
7 appropriate time, Plaintiffs shall depose the officers who used force against the  
8 decedent and additional officers who responded to this incident.

9 According to Plaintiffs, subjects on which discovery may be needed include:  
10 the officers' training; the officers' prior uses of force, if any, including any citizens' or  
11 internal complaints made against the involved officers; City of San Bernardino  
12 Department policies with regards to use of force complaints; Department policies with  
13 regards to when deadly force may be used; the handling of evidence by City of San  
14 Bernardino employees; medical treatment provided to the decedent on the scene of the  
15 incident; testimony of witnesses and involved officers, regarding the facts of the  
16 shooting incident and the City's investigation into the incident.

17 **ii. Defendants**

18 Defendants intend to serve written discovery upon Plaintiffs and subpoena  
19 copies of all relevant records, including, but not limited to, medical records,  
20 psychological records, law enforcement records, etc. After defense counsel's receipt  
21 and review of such responses and records, the depositions of the Plaintiffs and  
22 relevant witnesses will be scheduled. Additionally, defendants anticipate retaining  
23 various consultants and expert witnesses to testify on the issues of liability, causation,  
24 and damages.

25 **K. DISCOVERY CUT-OFF**

26 The parties propose a discovery cut-off date of September 26, 2025

27 **L. EXPERT DISCOVERY**

28 The parties propose an initial expert disclosure date of August 1, 2025.



1 The parties propose a rebuttal expert disclosure date of August 22, 2025.

2 **M.DISPOSITIVE MOTIONS**

3 **i. Plaintiffs**

4 Plaintiffs request in advance a minimum of two weeks to oppose any  
5 dispositive motion such as a motion for summary judgement or summary  
6 adjudication, should one be filed. The parties agree to the following briefing schedule:  
7 (1) Last day to file dispositive motions: September 8, 2025; (2) Last day to file  
8 oppositions to dispositive motions: September 22, 2025; (3) Last day to file a reply to  
9 any dispositive motion: October 6, 2025; (4) Last day to hear dispositive motions:  
10 October 20, 2025.

11 **N. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION**

12 No settlement discussions have taken place at this time. Counsel are amenable  
13 to using the attorney settlement panel.

14 **O. TRIAL ESTIMATE**

15 The parties have requested trial by jury and estimate the length of the trial at  
16 approximately 5 court days after jury selection.

17 Parties propose a trial date of March 3, 2026. Parties request a Pre-Trial  
18 Conference date of February 16, 2026.

19 **P. TRIAL COUNSEL**

20 Dale K. Galipo will be lead trial counsel for the Plaintiffs' case.

21 Lead trial counsel for Defendants will be Steven J. Rothans.

22 **Q. INDEPENDENT EXPERT OR MASTER**

23 Counsel agree that neither a discovery master nor independent scientific expert  
24 are needed for this lawsuit.

25 **R. TIMETABLE**

26 Please see attached.

27

28 ///



**S. OTHER ISSUES**

None at this time.

DATED: August 26, 2024

CARPENTER, ROTHANS & DUMONT LLP

By: s/ Scott Carpenter

Scott Carpenter

Attorney for Defendants

DATED: August 26, 2024

LAW OFFICES OF DALE K. GALIPO

By: s/ Dale K. Galipo

Dale K. Galipo

Renee V. Masongsong

Attorneys for Plaintiffs

JUDGE JESUS B. BERNAL

**EXHIBIT A: SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET**

<b>Case No.</b>	<b>5:24-cv-00088-JGB-SHK</b>		
<b>Case Name</b>	<b><i>Jose Alvarado, et al. v. City of San Bernardino, et al.</i></b>		
<b>Matter</b>	<b>Plaintiff(s) Request mo/day/year</b>	<b>Defendant(s) Request mo/day/year</b>	<b>Court's Order</b>
<input checked="" type="checkbox"/> Jury Trial or <input type="checkbox"/> Court Trial (Tuesday at 9:00 a.m.) Length: <u>5 Days</u>	3/3/2026	3/3/2026	
Final Pretrial Conference [L.R. 16] and Hearing on Motions <i>In Limine</i> (Monday – <u>two (2)</u> weeks before trial date)	2/16/2026	2/16/2026	
Last Date to Conduct Settlement Conference	7/4/2025	7/4/2025	
Last Date to <b>Hear</b> Non–discovery Motions (Monday at 9:00 a.m.)	10/20/2025	10/20/2025	
All Discovery Cut–Off (including hearing all discovery motions)	9/26/2025	9/26/2025	
Expert Disclosure (Rebuttal)	8/22/2025	8/22/2025	
Expert Disclosure (Initial)	8/1/2025	8/1/2025	
Last Date to Amend Pleadings or Add Parties	12/23/2024	12/23/2024	

ADR [L.R. 16–15] Settlement Choice:

- ☒ Attorney Settlement Officer Panel
- ☐ Private Mediation
- ☐ Magistrate Judge